

SELECTED PUBLISHED OPINIONS - JUDGE DANA L. RASURE

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<u>Case</u>	<u>Issue(s)</u>
<u>In re Cerrudo</u> , 214 B.R. 500 (Bankr. N.D. Okla. 1997) (Case No. 96-02334-R, Doc. 14) (ch. 7)	<ul style="list-style-type: none"> Reopening bankruptcy case to add unscheduled creditor; 11 U.S.C. §§ 350(b), 727(b), 523(a)(3).
<u>In re Carrillo</u> , 215 B.R. 212 (Bankr. N.D. Okla. 1997) (Case No. 96-05178-R, Doc. 60) (ch. 13)	<ul style="list-style-type: none"> Burden of proof in objecting to claim. Res judicata effect of confirmation of chapter 13 plan.
<u>In re Lewis</u> , 216 B.R. 644 (Bankr. N.D. Okla. 1998) (Case No. 97-01668-R, Doc. 30) (ch. 7)	<ul style="list-style-type: none"> Homestead; abandonment of homestead, exemption of proceeds; 31 O.S. §§ 1, 2.
<u>In re Brashers</u> , 216 B.R. 59 (Bankr. N.D. Okla. 1998) (Case No. 97-03396-R, Doc. 14) (ch. 7)	<ul style="list-style-type: none"> Unpaid income taxes not “consumer debt” for purpose of determining “substantial abuse”; 11 U.S.C. §§ 101(8), 707(b).
<u>In re Segura</u> , 218 B.R. 166 (Bankr. N.D. Okla. 1998) (Case No. 97-03289-R, Doc. 25) (ch. 13); <i>superseded in part by Till v. SCS Credit Corp.</i> , ___ U.S. ___, 2004 WL 1085321 (2004).	<ul style="list-style-type: none"> Cramdown rate of interest in chapter 13 case (following Tenth Circuit); 11 U.S.C. § 1325(a)(5). Subsequently in <u>Till</u>, U.S. Supreme Court set cramdown rate as prime rate plus adjustment for risk of non-payment.
<u>Bank One Columbus, N.A. v. Schad (In re Kountry Korner Store)</u> , 221 B.R. 265 (Bankr. N.D. Okla. 1998) (Adv. No. 96-0114-R, Doc. 29) (ch. 7)	<ul style="list-style-type: none"> Dischargeability of credit card debt; burden of proof; 11 U.S.C. § 523(a)(2)(A), (B) and (C).
<u>In re Suddarth</u> , 222 B.R. 352 (Bankr. N.D. Okla. 1998) (Case No. 97-04791-R, Doc. 22) (ch. 7), <i>aff'd</i> 232 B.R. 789 (N.D. Okla. 1999) (Doc. 31, Doc. 32), <i>aff'd</i> 201 F.3d 449 (10 th Cir. 1999) (TABLE)	<ul style="list-style-type: none"> Determination of validity of lien in contested matter; 11 U.S.C. § 362(d); Bankr. R. 7001. Perfection of security interest in vehicle under Oklahoma law; sufficiency of lien entry form; 47 O.S. § 1110; 12A O.S. § 9-402(8).
<u>In re Digital Impact, Inc.</u> , 223 B.R. 1 (Bankr. N.D. Okla. 1998) (Case No. 97-00806-R, Doc. 272) (ch. 11)	<ul style="list-style-type: none"> Plan confirmation requirements; 11 U.S.C. § 1129. Classification of claims; full payment of administrative expenses; 11 U.S.C. §§ 503(b), 507(a), 1126(c), 1129(a)(9). Subject matter jurisdiction; 28 U.S.C. § 1334(b). Jurisdiction/power to order release of non-debtor third party; 11 U.S.C. § 524(e).

<u>Case</u>	<u>Issue(s)</u>
<p><u>In re Richardson</u>, 224 B.R. 804 (Bankr. N.D. Okla. 1998) (Case No. 98-01571-R, Doc. 16) (ch. 7)</p>	<ul style="list-style-type: none"> Avoidance of judicial lien on Oklahoma homestead after amendment of Oklahoma law to allow judicial liens on homestead; 11 U.S.C. § 522(f); 12 O.S. Supp. 1997, § 706.
<p><u>Spectrum Paint Co. v. Chambers (In re Chambers)</u>, 226 B.R. 915 (Bankr. N.D. Okla. 1998) (Adv. No. 97-0361, Doc. 22) (ch. 7)</p>	<ul style="list-style-type: none"> Exception to discharge for embezzlement; 11 U.S.C. § 523(a)(4). Application of Oklahoma Construction Trust Fund statute; 42 O.S. §§ 152, 153. Automatic stay/criminal prosecution of debtor; 11 U.S.C. § 362(b).
<p><u>In re Commercial Financial Services, Inc.</u>, 233 B.R. 885 (Bankr. N.D. Okla. 1999) (Case No. 98-05162-R, Doc. 707), <i>aff'd by District Court (Doc. 2132)</i>, <i>aff'd</i> 246 F.3d 1291 (10th Cir. 2001) (Doc. 2930) (ch. 11)</p> <ul style="list-style-type: none"> Contested matters between CFS and Spangler, Phelps, Bachman. 	<ul style="list-style-type: none"> Priority of contract termination pay claims of employees terminated post-petition; 11 U.S.C. §§ 503(b)(1)(A), 507(a)(1).
<p><u>In re Commercial Financial Services, Inc.</u>, 238 B.R. 479 (Bankr. N.D. Okla. 1999) (Case No. 98-05162-R, Doc. 1212), <i>appeal dismissed by District Court (Docs. 2193, 2427)</i> (ch. 11)</p> <ul style="list-style-type: none"> Contested matters initiated by William Kuntz 	<ul style="list-style-type: none"> Pleadings stricken for lack of standing to appear and be heard in chapter 11 case; U.S. Const. Art. 3, § 1, 11 U.S.C. § 1109(b).
<p><u>Commercial Financial Services, Inc. v. Brady (In re Commercial Financial Services, Inc.)</u>, 239 B.R. 586 (Bankr. N.D. Okla. 1999) (Adv. No. 99-0038-R, Doc. 46), <i>recommendation adopted by District Court (Doc. 56)</i> (ch. 11)</p>	<ul style="list-style-type: none"> Report and recommendation to District Court on motion to withdraw reference; 28 U.S.C. § 157(d), Bankr. R. 5011, Dist. Ct. Misc. Order 128, Rules B6 and B14. Core jurisdiction in action by debtor against employee for claims arising from postpetition conduct; 28 U.S.C. § 157(b)(1), (b)(2), (b)(3). Entitlement to jury trial; U.S. Const. Amd. 7, 28 U.S.C. § 157(e).

<u>Case</u>	<u>Issue(s)</u>
<p><u>In re Commercial Financial Services, Inc.</u>, 247 B.R. 828 (Bankr. N.D. Okla. 2000) (Case No. 98-05162-R, Doc. 1958) (ch. 11)</p> <ul style="list-style-type: none"> Contested matter initiated by debtor's motion for protective order; objection by Chase 	<ul style="list-style-type: none"> Rule 2004 discovery. Protective Order; Bankr. R. 7026. Bankruptcy court jurisdiction over records of debtor; 28 U.S.C. §§ 157(a), 1334(e); 11 U.S.C. § 541(a). Third party efforts to obtain debtor's records/information other than in bankruptcy proceeding subject to automatic stay; 11 U.S.C. § 362. Post-closing jurisdiction of court. Attorney-client privilege; work product doctrine; subject matter waiver; opinion v. non-opinion work product doctrine.
<p><u>Commercial Financial Services, Inc. v. Jones (In re Commercial Financial Services, Inc.)</u>, 251 B.R. 397 (Bankr. N.D. Okla. 2000) (Adv. No. 99-0005-R, Doc. 22), <i>recommendation adopted by District Court (Doc. 26)</i></p>	<ul style="list-style-type: none"> Report and recommendation to District Court on motion to withdraw reference; 28 U.S.C. § 157(d); Bankr. R. 5011; Dist. Ct. Misc. Order 128, Rule B6. Setoff, recoupment as claims against estate resulting in core jurisdiction, waiver of right to jury trial; 11 U.S.C. § 553; 28 U.S.C. § 157(b)(2)(E). Collection of debt owed to estate using trustee's turnover power; 11 U.S.C. § 542(b). Disallowance of claims; 11 U.S.C. § 502(d). Abstention; 28 U.S.C. § 1334(c)(1).
<p><u>Commercial Financial Services, Inc. v. Bartmann, et al. (In re Commercial Financial Services, Inc.)</u>, 251 B.R. 414 (Bankr. N.D. Okla. 2000) (Adv. No. 99-0006-R, Doc. 20), <i>supplemented by Commercial Financial Services, Inc. v. Bartmann, et al. (In re Commercial Financial Services, Inc.)</i>, 255 B.R. 68 (Bankr. N.D. Okla. 2000) (Doc. 35), <i>recommendation adopted by District Court (Doc 39)</i></p>	<ul style="list-style-type: none"> Report and recommendation to District Court on motion to withdraw reference; 28 U.S.C. § 157(d); Bankr. R. 5011; Dist. Ct. Misc. Order 128, Rule B6. "Related to" jurisdiction; 28 U.S.C. § 1334(b). Right to jury trial; U.S. Const. Amd. 7. Deferral of withdrawal of reference. Collection of debt owed to estate using trustee's turnover power; 11 U.S.C. § 542(b). Disallowance of claims; 11 U.S.C. § 502(d). Abstention; 28 U.S.C. § 1334(c)(1). <p>Supplement:</p> <ul style="list-style-type: none"> Reconsideration of report and recommendation in light of later occurring events. Claims for indemnification and setoff invoked bankruptcy court's core jurisdiction, waived right to jury trial.

<u>Case</u>	<u>Issue(s)</u>
<p><u>Snider v. Commercial Financial Services, Inc. (In re Commercial Financial Services, Inc.)</u>, 252 B.R. 516 (Bankr. N.D. Okla. 2000) (Adv. No. 99-0009-R) (Doc. 79), <i>recommendation adopted by District Court</i> (Doc. 145)</p>	<ul style="list-style-type: none"> • Report and recommendation to District Court on motion to withdraw reference; 28 U.S.C. § 157(d); Bankr. R. 5011; Dist. Ct. Misc. Order 128, Rule B6. • Time in which to file motion to withdraw reference; Dist. Ct. Misc. Order 128, Rule B6(2). • Filing adversary proceeding against debtor in bankruptcy court invoked core jurisdiction of bankruptcy court and waived right to jury trial. • Suits against trustees; 28 U.S.C. § 959(a). • Claims made under Workers Adjustment and Retraining Notification (WARN) Act are not “personal injury” claims requiring trial in district court; 28 U.S.C. §§ 157(b)(5), 1411(a).
<p><u>NationsBank, N.A. v. Commercial Financial Services, Inc. (In re Commercial Financial Services, Inc.)</u>, 268 B.R. 579 (Bankr. N.D. Okla. 2001) (Adv. No. 98-356-R, Doc. 101)</p>	<ul style="list-style-type: none"> • Bankruptcy Rule 7001. • Constructive trust under Oklahoma law. • Subordination of claims for rescission of securities transactions; 11 U.S.C. § 510(b). • Particular debt instruments were “securities”; 11 U.S.C. § 101(49)(A). • Pleading fraud; Fed.R.Civ.P. 9(b), 12(b)(6). • Elements of fraud; Oklahoma common law. • Fraud in sale of securities, proximate cause; Restatement of Torts § 548A. • Resulting trust under Oklahoma law.
<p><u>Ehrig v. United States (In re Ehrig)</u>, 308 B.R. 542 (Bankr. N.D. Okla. 2004) (Adv. No. 03-0142-R, Doc. 21)</p>	<ul style="list-style-type: none"> • Taxes for which a “return, if required,” was not filed within two years before bankruptcy were not dischargeable; 11 U.S.C. § 523(a)(1)(B). • “Substitute for return” filed by IRS under 26 U.S.C. § 6020 was not a “return.” • Return filed by debtor subsequent to substitute for return and assessment of tax, but within two years of bankruptcy, served no purpose and thus was not a “required” return.

<u>Case</u>	<u>Issue(s)</u>
<p><u>In re Manchester Gas Storage, Inc., ___ B.R. ___</u> (Bankr. N.D. Okla. 2004) (Case No. 00-04780-R, Doc. 501)</p>	<ul style="list-style-type: none"> • Objection to claims: standing-11 U.S.C. § 502(a); burden of proof-Bankruptcy Rule 3001. • Contract enforcement under Oklahoma law: consideration; pre-existing duty rule; consideration for modification of a contract; promissory estoppel and unjust enrichment as substitutes for consideration; 15 O.S. §§ 106, 107, 114, 115. • Rejection of executory contract: distinction between rejection and termination of contract; approval of contract termination- 11 U.S.C. § 363; measure of rejection damages; mitigation of rejection damages. • Binding effect of confirmed plan. • Disallowance of claims for post-petition interest-11 U.S.C. § 502(b); exception for oversecured creditors-11 U.S.C. § 506(b) and solvent chapter 7 estates-11 U.S.C. § 726(a)(5).
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